IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5650 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No.

INDIAN DYE STUFF INDUSTRIES LTD.

Versus

ASHOKBHAI DWARKADAS ZAVERI

Appearance:

MR DEEPAK V PATEL for Petitioner

MR K.S. Zaveri for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 19/08/98

CAV JUDGEMENT

Rule. Mr. K.S. Zaveri, learned advocate for respondent waives service of notice of rule.

This petition is filed to challenge the award passed by the Industrial Tribunal Baroda in Reference

No.26/1993 on 30.4.1997.

2. The petitioner is a Company incorporated under the provisions of the Companies Act,1956. It has got a factory for manufacturing dyes and chemicals. The said factory was formerly a unit of SARABHAI CHEMICALS and was taken over by the petitioner in July 1984.

3. The respondent was working as unskilled Badli worker in Security Department. On 11.12.1982 the respondent was suspended on the allegation that he had committed a grave misconduct on 10.12.1982. He was served with a chargesheet on 11.12.1982 and Departmental inquiry was initiated. But admittedly the same was not concluded by recording any finding as regards the alleged misconduct. It is the claim of the petitioner that after the petitioner took over there was a settlement between the petitioner and the labour union on 7.10.1984 under section 2 P. The respondent was the member of the said union. As per settlement the petitioner asked to join his duty but he did not join his duties. But he made a complaint under section 33 R.W.S. 33 A of the Industrial Disputes Act, 1947 bearing No.17/1985. The said complaint No.17/1985 was decided ex-parte in favour of the respondent. Hence the petitioner had filed Special Civil Appln. No.1865 of 1988 in this High Court. During the pendency of the said Writ petition at the suggestion of this High Court the respondent was reinstated on 29.3.1998. Thereafter the order passed in favour of the respondent was set aside and the matter was remanded to the Industrial Tribunal.

4. After the remand the said Complaint No.17/1985 was heard after giving opportunity of being heard to both the sides. The said Complaint was decided in favour of the respondent. But in the writ petition filed by the present petitioner bearing Special Civil Appln.No.6978/90 the said order in favour of the respondent was set aside by holding that the Industrial Tribunal has no jurisdiction to entertain the complaint under section 33 R.W.S. 33 A.

5. Thereafter the respondent raised an industrial dispute for getting full wages from 11.12.1982 to 29.3.1988. He was paid subsistence allowance from 11.12.1982 to June 1984. The industrial dispute resulting into Reference No.(II) No.26/1993, was referred to Industrial Tribunal, Baroda. The Industrial Tribunal gave opportunity of leading evidence to both the petitioner and the respondent. The Industrial Tribunal answered the reference in favour of the respondent. He

negatived the contentions raised on behalf of the petitioner (1) that the reference was barred by principle of Res-judicata and (2) that the workmen was not entitled to get any wages as he failed to resume his duties as per the terms of the settlement as he was bound by the settlement of 7.10.1984.

6. The Industrial Tribunal has rejected the contention of the petitioner that the petitioner's claim was barred by principle of Res judicata. The said finding of the Industrial Tribunal is quite proper and just. In the Complaint No.17/1985 the petitioner's claim was not rejected on merits by holding that he was not entitled the back wages in question. The Industrial Tribunal had upheld the claim of the respondent but this High Court had found in Special Civil Application No.6978/1990 that the said claim could not be investigated and decided in a proceeding under section 33 A read with section 33 of Industrial Disputes Act, 1947. On reaching to that conclusion the order in favour of the respondent was set aside. Thus his claim was not rejected on merits. Hence the industrial dispute raised by the petitioner could not be said to be barred by principle of Res judicata. Therefore the finding recorded by the Industrial Tribunal in that respect could not be interfered with.

7. It is vehemently urged before my by Mr. Deepak Patel, learned advocate for the petitioner that in view of the settlement at Annexure `C' the respondent ought to have resumed his duty and as he has not done so he is not entitle to any wages from the date of settlement till his reinstatement on 29.3.1988. Admittedly, the settlement at Annexure `C' is not signed by the respondent. Said settlement is signed by M.S. Mansoori, who is President of S.C. KARMACHARI SANGH. Mr. M.S. Mansoori was engaged by the respondent to defend him in the Departmental Enquiry and he had never authorised or consented to Mansoori's action in settlement. The Industrial Tribunal also observed that the settlement was not clear on the point of wages and it was not in the interest of the workman. Then the Industrial Tribunal has further found on the strength of the documentary as well as oral evidence that as a matter of fact the respondent was not allowed to join his duty though he desired to join. That fact was also intimated by the respondent by sending his letter dated 29.11.1984. The said finding recorded by the Industrial Tribunal on account of appreciation of oral as well as documentary evidence. The said finding could not be said to be either perverse or grossly errorneous resulting into

miscarriage of justice. Thus the Industrial Tribunal has found that the workman had not failed to join his duty after the settlement in question but he was not allowed to join. On coming to that conclusion the Industrial Tribunal held that the workman could not be denied his wages.

8. Admittedly the Departmental Enquiry was not concluded. Therefore there is no denial of wages by way of punishment. Therefore the Industrial Tribunal has rightly held that the claim of the workman must be allowed.

9. The learned advocate for the petitioner has cited before me the cases of U.P. CO-OP. FEDERATION LTD. Vs. RAM SINGH YADAV 1998(2) S.C.C. 346, M/s. JYOTI ELECTRIC MOTORS LTD Vs. WORKMEN - 1997(2) G.L.R. 1614. Both these cases are not applicable on facts to the case before me. In the case before Apex Court the workman had voluntarily remained absent from duty and consequently he was not granted back wages for the period for which he had not worked. In the case before the Single Judge of the court in 1997(2) G.L.R. 1614, the workmen were denied wages for the period during which they were on strike.

10. Mr. Deepak Patel learned advocate for petitioner has also cited before me the case of SRISILK Vs. GOVT. OF ANDHRA PRADESH - A.I.R. 1964 S.C. 160 in support of his contention that the settlement is binding against the respondent. But the workmen is not given backwages by holding that settlement is not binding on him but on the ground that after the settlement though he wanted to resume his duty he was not allowed to resume his duty. Thus it is held that he was not a voluntary absentee for his duty.

11. Thus I hold that the award passed by the Industrial Tribunal could not be said to be on account of either commission of any perversity or any gross error resulting into injustice. Consequently, I do not find any reasons to interfere with the award of Industrial Tribunal. Hence, the petition is dismissed. The rule is discharged. Parties are directed to bear their respective costs.

******

syed*